

Appeal Decisions

SUMMARY

- 1 A summary of the appeal decisions taken in the last month.

RECOMMENDATION

- 2 To note the decisions on appeals taken.

REASONS FOR RECOMMENDATION

3. This report is for information only.

SUPPORTING INFORMATION

- 4.1 Appendices 2 and 3 give details of decisions taken.
- 4.2 The intention is that a report will be taken to a Committee meeting each month.

OTHER OPTIONS CONSIDERED

- 5 None

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	4 March 2011
---	--------------

For more information contact: Background papers: List of appendices:	Paul Clarke 01332 255942 e-mail paul.clarke@derby.gov.uk Planning application files Appendix 1 – Implications Appendix 2 – Summary of appeal decision(s) Appendix 3- Decision letter(s)
---	---

IMPLICATIONS

Financial and Value for Money

1 None

Legal

2 None

Personnel

3 None

Equalities Impact

4 None

Health and Safety

5. None

Environmental Sustainability

6. None

Asset Management

7. None

Risk Management

8. None

Corporate objectives and priorities for change

9 None

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00252/PRI	Continued use of forecourt area as hand car wash and provision of car parking bays	Sunny Hill Service Station, Blagreaves Lane, Littleover, Derby	Allowed with conditions
<p>Comments:</p> <p>I am sure Members will recall the long and troubled history of site which has been the subject of a number of previous planning applications, all refused. Also an Enforcement Notice, an appeal against which was dismissed. The appellant then submitted the application which has become the subject of this appeal. Whilst this appeal was being determined the Enforcement Notice was held in abeyance.</p> <p>This application included details of noise mitigation measures not previously submitted. Consultants were able to demonstrate these measures would, in their opinion, reduce the noise generated to an acceptable level. The proposed hours of opening of the car wash were also reduced to 9.00 - 18.00 on Monday to Friday, 09.00-13.00 on Saturday and no opening on Sundays or Bank Holidays.</p> <p>The Council's Environmental Health Officer did not raise any objections to this application, being satisfied with the proposed noise mitigation measures. However I was still concerned about the wider impact of the proposal on the amenity of the nearby residents, particularly the residents of 235 Blagreaves Lane and considered that this revised proposal failed to accord with the aims of saved policy GD5 of the adopted City of Derby Local Plan Review.</p> <p>In considering the subsequent appeal the Inspector agreed with my assessment that the main issue in this appeal was the impact of the proposal on the living conditions of the occupiers of no. 235 Blagreaves Lane, having regard to noise and disturbance.</p> <p>The comments and suggestions of the previous Inspector have been carefully looked at during this appeal. The present Inspector noting that the scheme had been amended in line with those comments. This included the reduction in working hours, the provision of an acoustic barrier and placing the vacuum in an acoustic enclosure.</p> <p>When he made his site visit the Inspector noted that noise from the operation could plainly be heard. He also observed the character of the area and the garden of no. 235 Blagreaves Lane. He agreed with the appellant's assessment that the occupiers were unlikely to use their front garden for 'quiet relaxation' and it was the rear garden which was most likely to suffer from noise disturbance from the operation on the appeal site.</p> <p>The Inspector noted that the Council's Environmental Health Officer was satisfied with the proposed noise mitigation measures and did not object to the proposal. He also agreed that the general comings and going at the front of the site were an issue of concern to the nearby residents but concluded that proposed restricted hours of operation would not extend to times when the occupiers might reasonably expect to enjoy peace and tranquillity. He also noted that the site had a long history of commercial use with unrestricted hours of operation.</p> <p>He therefore concluded that the Council's concerns were unfounded and was satisfied that provided necessary conditions were put in place the proposal would not cause undue harm to the living conditions of the nearby occupiers. He therefore allowed the appeal conditionally. The full list of conditions is given in the Inspector's decision letter</p>			

which forms appendices to this report.

I do have some concerns regarding the Inspector's comments about the Council's ability to enforce these conditions. Given that the any beaches in the conditions are likely to occur outside the contracted working hours of either the Environmental Health or Planning Enforcement Officers, monitoring any such breaches will be difficult to achieve.

The Enforcement Notice, currently in abeyance, will now need to be withdrawn

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00266/PRI	Installation of windows	2 St. James Court, Friar Gate, Derby	Allowed with conditions
<p>Comments:</p> <p>This proposal sought permission for the replacement of 37 timber framed windows with uPVC in this large modern office building in the Friar Gate Conservation Area. Both CAAC and the Built Environment team objected to the proposal as they considered that uPVC was not a material of sufficient quality to respect the classical architectural design of the building or appropriate in the Conservation Area. There is also a concern that if permission were granted for uPVC windows in this prominent location it would set a dangerous precedent for other applications in the Conservation Area which if granted would not be desirable in an area of special historic character. Therefore the application was judged to conflict with the aims of saved policy E18 of the adopted City of Derby Local Plan Review and was refused planning permission.</p> <p>The Inspector considered that the main issue in the appeal was the effect of the proposed windows on the character and appearance of the Conservation Area.</p> <p>The Inspector noted that the complex had been designed in a style sympathetic to the traditional architectural features which surround it and agreed that the existing window design was in keeping with the older buildings in the Conservation Area. He judged the Council's main concern was the 'bulky manufactured appearance' of the proposed uPVC windows when compared with the existing timber framed windows.</p> <p>The Inspector commented upon nearby uPVC windows and regarded these as a 'point of reference and demonstration of the comparative visual properties of the style of treatment that is now proposed' even though these windows appear to be unauthorised.</p> <p>He commented that with attention to detail in design and the use of appropriate glazing bars and the intention to match the proportions of the existing windows the proposed windows would 'sit happily' in the modern setting of St James Court. He therefore concluded that the proposal would not harm the appearance or character of the Conservation Area and therefore did not conflict with saved policy E18 of the adopted CDLPR, accordingly he allowed the appeal.</p> <p>I am aware that the Built Environment team are very disappointed by this result which they consider to be inconsistent with the aims of preserving the special character of the historic environment within a Conservation Area. Perhaps some comfort may be drawn from the Inspector's comments that whilst he noted this scheme would improve the energy efficiency of the building, this reason alone would not be sufficient to accept an otherwise visually unsatisfactory design solution. The appellant is also required to have the window design approved by condition before work commences and by this means we are able to ensure the best design solution possible is achieved.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00383/PRI	Erection of 14 dwellings and formation of access	Site of Palm Court Restaurant, Duffield Road, Derby	Dismissed
<p>Comments:</p> <p>Members will recall this proposal for 14 dwellings coming before Committee in July last year with a recommendation to grant planning permission. However Members expressed their concerns that the proposed scheme was over intensive and out of keeping with the surrounding locality and would result in an over bearing development which would cause an unreasonable loss of amenity to nearby residents. The proposal was judged to be contrary to saved policies GD4, GD5, H13 and E23 of the adopted City of Derby Local Plan Review and it was refused planning permission.</p> <p>The applicant lodged an appeal against this decision and the appeal was handled under the 'written representations' procedure. The Inspector, in her report, considered that the main issues of the appeal were the effect of the proposal on the character and appearance of the surrounding area and the effect on the living conditions of the nearby occupiers.</p> <p>The Inspector discussed at some length the recent changes to PPS3, which remove density targets for housing development but retain the requirement for the efficient use of previously developed land and the City Council's own minimum target density of 35 dwellings per hectare as set out in saved policy H13. She also considered that this policy was consistent with PPS1.</p> <p>The variety of housing styles and densities in the locality was carefully considered with the Inspector noting both the older more established residential character and the more recent high density town houses which have been constructed. Although she did not feel that these new developments were directly comparable with the proposed development due to differences in layout.</p> <p>The Inspector was not satisfied with the layout of the proposed scheme, considering that the break in the frontage was out of character with the surroundings. She judged the parking and turning areas to be somewhat contrived and felt this was caused by the over intensive nature of the scheme. However she noted that there was no objection in principle to a high density development here simply that the design of the proposed scheme was inappropriate and did not respect the surroundings or topography. She considered that the principle of terraced housing was satisfactory in this location as were smaller back gardens than many of the existing dwellings enjoyed.</p> <p>Turning to the living conditions of nearby occupiers the Inspector did not share the concerns of Members that these would be unduly harmed by the proposed scheme, judging that the resulting overlooking would be no more than found in most urban areas, neither was there evidence of overshadowing of adjoining properties. On this issue she concluded that the scheme was not contrary to the aims of saved policies GD5 and H13 of the CDLPR.</p> <p>The Inspector considered that the scheme provided adequate parking provision and was not a threat to highway safety and that provision had been made for recycling and refuse bins.</p> <p>The fact that many local residents wished to see the site re-developed and letters of</p>			

support for the proposal had been received as well as letters of objection was noted.

The Inspector ultimately refused planning permission for the proposal because of her concerns regarding the layout of the scheme which she considered did not adequately respect the surroundings and in its present form was over intensive. However it must be noted the Inspector has not ruled out the possibility of a high density scheme of terraced houses on this site if a satisfactory design and layout can be achieved.

A Unilateral Undertaking had been submitted prior to the appeal to secure contributions towards open space, the public realm and highway improvements. The Council was satisfied that it was acceptable in principle. However the Inspector gave little weight to this agreement as she did not have evidence that the tests of the Community Infrastructure Levy Regulations had been met.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/07/09/00796/PRI	Installation of windows and door	Units 11 and 12, 218 Siddals Road, Derby	Allowed with conditions

Comments:

Planning permission was originally granted in 2001 for the conversion of this site into residential accommodation. This proposal sought to make some alterations to those residential units including the addition of new windows and a door. Planning permission was granted conditionally and the condition which is the subject of this appeal relates to the materials used for these new windows and door. As the Railway Conservation area was extended in 2009 to include this group of buildings the use of appropriate materials to maintain the historic character of the area was considered necessary. The proposal originally included the use of uPVC windows, but in my opinion this modern material failed to respect the historic context of the conservation area.

The other windows in the conversion are made of uPVC. There is no record of planning permission being granted for this at any time.

The Inspector considered that the main issue of the appeal was the choice of materials for the proposed windows and door.

The Inspector noted that the conversion of the buildings in this group to residential units had taken place before the Railway Conservation Area had been extended and that the existing units all had uPVC windows. She commented that as the proposed windows were very much in the public realm the use of different materials may become apparent over time as any timber windows weathered or if they were not properly maintained. She considered that this loss of design continuity could harm the character and appearance of the building.

The Inspector considered that there was little justification for requiring timber windows as there was no visual conformity in the group of buildings which are of different ages and styles. She also considered that there was sufficient distance between the appeal site and other historic buildings within the Railway Conservation Area so the uPVC windows would not appear a discordant feature.

In general the Inspector noted that she agreed that the use of uPVC was not appropriate in an historic setting but in this case she considered that continuity of materials and detailing more important in maintaining the character and appearance of the Conservation Area. She did not regard this decision as one which would set a precedent for the use of modern materials within the Conservation Area as the circumstances of this case were unlikely to be common.

The Inspector felt that saved policy E18 was the most relevant Local Plan Policy in this case and in her opinion the proposal accorded with the aims of this policy. She therefore disagreed with my decision and allowed the appeal with modified conditions, requiring only the proposed door to be constructed of timber to help preserve the character and appearance of the Railway Conservation Area.

Application for Costs

For an application for costs against the City Council to succeed the appellant must demonstrate that the Council has acted unreasonably causing unnecessary delays and

expense to the appellant.

In this case the Inspector did agree that there had been delays in processing the application but she did not agree that this had cost the appellant undue expense in the appeal process. She also noted that the appellant had had ample opportunity to lodge an appeal against non-determination and he had not chosen to do this.

She considered that I had adequately explained my position with regard to planning policy and how I justified my opinion of the proposal. The Inspector noted that in matters of character and appearance there was an element of judgement to be made and whilst she disagreed with the assessment and conclusions I reached I had substantiated and justified my reasoning. She commented that the condition had been imposed to overcome an objection to the proposed materials and if I had not chosen this course of action the development could have simply been refused.

Therefore the Inspector concluded that unreasonable behaviour had not been demonstrated by the appellant. For these reasons, although she allowed the appeal the award of costs failed.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Outline Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/08/10/01062/PRI	Residential Development	Site of 20 Chesterton Avenue, Sunnyhill, Derby	Dismissed

Comments:

This outline application sought permission to redevelop the site by demolishing the existing bungalow and increasing the number of residential units on the plot. The notional layout included one detached bungalow and a pair of semi-detached properties. The proposal was refused under delegated powers as it was considered to be an overdevelopment of the site resulting in a congested form of development which would be detrimental to the amenity of nearby residents and harmful to the living conditions of future occupiers. As such it was regarded as contrary to saved policies GD4, GD5, H13 and E23 of the adopted City of Derby Local Plan Review.

The Inspector considered that the main issue of the appeal was the effect of the proposal on the character of the area and the living conditions of adjacent occupiers and future residents.

The Inspector noted that the application was in outline only but considered the indicative layout proved to be useful in assessing the proposal. She commented that the plot widths and dwelling widths would be less than other dwellings in the street and in her opinion this would fail to integrate with the existing dwellings and not respect the urban grain of the area. She therefore agreed with my assessment that the proposal was contrary to the aims of saved policies GD5, H13 and E23 of the CDLPR.

She was less concerned with regard to the living conditions of future occupiers of the plots and considered with careful design these concerns could be overcome.

In commenting on national planning policy the Inspector noted the recent changes to PPS3 - that there was no longer a priority for the redevelopment of garden land, as this site is. However that was not the main issue when considering this proposal. Also from PPS3, the efficient use of land is a consideration but in this case the harm which would be caused by this proposal outweighs this particular point.

Drawing all these issues together the Inspector agreed with my overall assessment that the proposal would be detrimental to the living conditions of nearby residents. Therefore, she dismissed the appeal.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/11/09/01322/PRI	Extension to school (changing rooms) and creation of all weather sports pitch and floodlighting	Chellaston School, Swarkestone Road, Chellaston, Derby	Dismissed

Comments:

I am sure Members will recall this application and those which preceded it for the all weather pitch at Chellaston School. In very brief summary, planning permission was granted for this project in early 2009 however this decision has become the subject of a judicial review. As this is a very lengthy procedure the applicant chose to resubmit a very similar proposal, this time accompanied by an Environmental Impact Assessment, in November 2009 in the hope of achieving a decision more promptly. This later application which is the subject of the appeal came before Planning Control Committee with a recommendation to grant planning permission. However Members were very concerned about the effect of the proposal upon the amenity of those residents whose property was close to the application site and the application was ultimately refused, being considered contrary to the aims of saved policy GD5 of the adopted City of Derby Local Plan Review.

The appeal was handled under the 'written representations' procedure. This was chosen by the applicant and agreed by the Planning Inspectorate. My officers did make representations to the Inspectorate about this choice of appeal procedure, considering that a hearing would have been more appropriate thus allowing the very many interested parties to speak to the Inspector, however the appeal proceeded as originally proposed.

The Inspector noted that the 'changing rooms' element of the application was not contentious and the main issue in the appeal was the effect of the all weather pitch and its associated floodlighting on the amenity of nearby residents and particularly the impact of the resulting noise and disturbance.

The Inspector noted the location of the proposal in relation to nearby properties and the distances these would be from the proposed site - between 75 and 100 metres. He also commented upon the number of noise assessments submitted during the life of the application, the differences between them and the confusion arising from this. This particularly relates to the positioning of bunds to mitigate the impact of the noise from the proposed pitch on the residential properties. The Inspector considered that Members were not advised of the varying conclusions of the second and third noise assessments and there was also discrepancies in drawings which failed to show all the proposed bunds.

A condition severely restricting the hours of operation was proposed in the report to Committee and this reflected the concerns I had regarding the impact of the proposal on residential amenity. The Inspector considered that this would not have been acceptable to the applicant had the proposal been granted permission but in recognition of the concerns raised the applicant proposed modified hours of operation in their appeal statement. In reaching his conclusions on the proposal the Inspector took into account the revised operating times.

The Inspector commented upon the impact of the relocated grass rugby pitch, the all weather pitch, the use of both pitches together and the resulting concentration of uses at times of inclement weather in one location. He also took into account the numbers of different groups using the facilities and the increase in activity throughout the year. He

particularly noted that the noise assessments stated that noise 'may exceed the agreed limits' at the nearest properties and this could be mitigated by the use of a bund, not that noise would no longer be heard, but simply reduced to an acceptable level. Had this been coupled with a similar level of activity it would not have been a matter of material concern, however as the proposal involved almost twice the original level of activity throughout the year this was of concern to the Inspector. In his opinion, the residents of Swarkestone Road would experience regular noise on weekday evenings.

Turning to the organised sporting activities at weekends, the Inspector noted that the nearby residents would experience the 'shrill noise of whistles' and that this high frequency noise would not be significantly reduced by any bund or proposed planting. Whilst in the summer months activity would be more dispersed in the three seasons of the year he concluded the residents of Swarkestone Road would experience noise whilst in their gardens and this would undermine their enjoyment of their outdoor amenity areas. He also commented that it was likely that the proposed Sunday use would lead to residents being disturbed at times when they might reasonably expect quiet such as on Sunday mornings or when they might expect to enjoy their gardens, throughout the day on Sunday and this would occur all year round. The Inspector considered that the residents of Glenn Park Close, although further away from the site, would still be affected by this weekend activity and they too have a reasonable expectation of a quiet Sunday throughout the year which would be undermined by the proposal.

Commenting briefly on other matters the Inspector felt that the proposed floodlighting would 'undermine the evening outlook' for the residents of Swarkestone Road and harm their 'enjoyment of views of the setting sun'

The Inspector concluded by drawing together all the matters which had concerned him, the increase in the level of activity, the harmful impact on the amenity of nearby residents, the confusion in the submitted documents regarding the position of bunds and what information the Committee had before them when determining the application. Taking all these matters into account the Inspector agreed that the proposal would have a significantly adverse effect upon the amenities the residents of Swarkestone Road and Glen Park Close by virtue of the noise and disturbance which would result from the proposal. He therefore agreed with the assessment of the Planning Control Committee that the proposal was contrary to the aims of saved policy GD5 of the CDLPR and accordingly he dismissed the appeal.

Recommendation: To note the report.



Appeal Decision

Site visit made on 13 January 2011

by Chris Hoults BA BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2011

Appeal Ref: APP/C1055/A/10/2138901

Sunny Hill Service Station, Blagreaves Lane, Littleover, Derby, DE23 1PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Sadaqat Hussain against the decision of Derby City Council.
 - The application Ref DER/03/10/00252/PRI, dated 24 February 2010, was refused by notice dated 23 September 2010.
 - The development proposed is the continued use of a hand car wash operation including new noise mitigation measures and restricted hours of operation.
-

Procedural matters

1. The description of the proposal on the application form is as set out above. The application site covers the whole of the former service station which also contains a garage use for vehicle repairs etc. and a dry cleaners. The car wash use covers part of the site and is actively taking place but it is unauthorised and is the subject of an enforcement notice, upheld on appeal, requiring it to cease. The application is therefore retrospective and I consider that the development is better described as a change of use of part of the premises to use as a hand car wash operation. I deal with the appeal on this basis.

Decision

2. I allow the appeal, and grant planning permission for a change of use of part of the premises to use as a hand car wash operation at Sunny Hill Service Station, Blagreaves Lane, Littleover, Derby, DE23 1PT, in accordance with the terms of the application, Ref DER/03/10/00252/PRI, dated 24 February 2010, subject to the following conditions:
 - 1) The noise mitigation and acoustic measures as shown on submitted drawing no. 002 – Proposed Site Layout and drawing no. 003 – Details of the Acoustic Screen and as detailed in the Hepworths Acoustics Report No. 10541.01/1v2 dated January 2010 in so far as it relates to the details of the acoustic enclosure for the vacuum power unit and its location on weekdays and at weekends and the height of the noise barrier shall be implemented in full by no later than 21 days from the date of this decision and shall remain in place at all times thereafter.
 - 2) The use shall not operate other than between the hours of 0900 – 1800 on Mondays to Fridays and 0900 – 1300 on Saturdays. The use shall not operate at any time on Sundays and bank and public holidays.
 - 3) The jet washing of cars and use of associated equipment shall at all times only take place to the front of the acoustic screen, between it and the site frontage to the road.

- 4) Details relating to the means of disposal of foul water associated with the use hereby permitted shall be submitted for the written approval of the local planning authority within 21 days of the date of this decision, which shall include a timetable for their implementation. The means of disposal shall be implemented in accordance with the approved details.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers, having regard to the potential for noise and disturbance to no. 235 Blagreaves Lane.

Reasons

Background

4. The car wash operation has been the subject of three previous unsuccessful applications. However, following the upholding of the subsequent enforcement notice requiring its cessation, the appellant has sought to address the concerns of the Inspector in dismissing that appeal. This has resulted in revisions to the scheme as considered by him. These are concerned with the provision of an acoustic barrier, the placing of the vacuum in an acoustic enclosure and a reduction in the hours of operation.

Main Issue

5. The site is on the edge of a neighbourhood shopping centre in an outlying suburb of Derby, separated from shops by a library. It has a layout typical of a filling station, with a large canopy to the front and a flat-roofed building behind, part of which is used by the car wash as an office and waiting room. Though there are commercial uses nearby, the character of the immediate locality is residential. At the time of my visit, mid-morning on a weekday, the main road to the front of the site was largely quiet and noise associated with the car wash was plainly audible from the opposite side of the road. I noted also that parked cars associated with the garage use limited the area used for car washing. This resulted in cars being dried and polished in the open area close to the boundary with no. 235, including in the part towards the rear shown on the plan as "staff parking".
6. No. 235 is a semi-detached dwelling having a common boundary with the site. The front garden is given over to landscaping and a wide driveway and, with its open frontage to the main road, is unlikely to be used by occupiers for quiet relaxation. The appellant's noise consultants identify the use by occupiers of its large rear garden as most likely to be vulnerable to any noise and disturbance from car washing operations, a view with which I concur.
7. The previous Inspector's concerns were about the cumulative effect on occupiers' living conditions from noise from car washing operations and the associated use of power equipment, the hours of operation and the manoeuvring of cars and opening and closing of car doors. The Council appears to accept that the provision of an acoustic screen should adequately mitigate noise from washing operations, provided that this is restricted to the front of the screen. A condition attached to a grant of permission can require that. The Council appears to be similarly satisfied that enclosing the vacuum power unit would adequately mitigate noise from that quarter. I note that, on the basis of these measures and the reduction in the hours of operation, its Environmental Health Officer no longer maintains an objection.

8. The Council nevertheless remains concerned about vehicle movements close to the boundary with no. 235. I accept that this is a real concern given that the restricted layout and other uses on the site make it likely that some elements of the car wash operations will encroach close to it. However, these relate mainly to the parking and manoeuvring and drying and polishing of cars. The latter gives rise to little noise. Under the restricted hours of operation, any noise and disturbance from the former (i.e. from doors slamming etc.) would be restricted to normal daytime working hours and would not extend, even on Saturday mornings, to times when occupiers should expect greater peace and quiet. I bear in mind also that the site appears to have had a long history of commercial use, involving vehicle movements, with no restrictions on hours.
9. I acknowledge the reservations of the occupiers of no. 235 regarding the need to enforce controls on the operation, particularly in terms of the proposed reduction in hours. I do so bearing in mind that it is my experience that this type of operation seems to be at its busiest at weekends and that a need for weekend working had been emphasised in the previous appeal. Nevertheless, I deal with the proposal in the terms in which it is made and the appellant appears to have considered the effect of reduced hours on the viability of the operation before offering them under the revised proposals. The Council is capable of enforcing the requirements of any condition relating to this.
10. Accordingly, I conclude that, provided appropriate controls are put in place and enforced where necessary, no harm should arise to the living conditions of occupiers of no. 235. Other neighbouring occupiers are either further away from the site or separated from it by the main road with its related traffic noise. The Council's remaining concerns are, I consider, unfounded. No conflict should arise in relation to those factors relating to residential amenity covered by criteria (d) and (g) of saved Policy GD5 of the City of Derby Local Plan Review. For these reasons I conclude that the appeal should be allowed.

Conditions

11. I largely follow the Council's suggested conditions, with modifications in the interests of clarity and precision. For reasons which should be clear from my decision, in the interests of residential amenity, conditions should require the implementation of the various acoustic measures and controls over hours of operation. A period of 21 days to implement the measures is reasonable. The noise consultant's report recommends that jet washing only take place to the front of the noise barrier and I impose a condition to that effect. I also impose a condition requiring that details of measures for the disposal of foul water be agreed and implemented, in the interests of securing a satisfactory means of drainage from the site. No details are provided in the application, though a brief reference to interceptors is made in the Design and Access Statement.

C M Hoult

INSPECTOR



Appeal Decision

Site visit made on 13 December 2010

by Chris Frost BSc(Hons) DipLD FLI CBIol MBS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 January 2011

Appeal Ref: APP/C1055/A/10/2137668
2 St James Court, Friar Gate, Derby DE1 1BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by The Voice Union against the decision of Derby City Council.
 - The application Ref: DER/03/10/00266/PRI dated 2 March 2010, was refused by notice dated 27 April 2010.
 - The development proposed is for replacement windows to the east elevation of the premises.
-

Decision

1. I allow the appeal, and grant planning permission for replacement windows to the east elevation of 2 St James Court, Friar Gate, Derby in accordance with the terms of the application, Ref: DER/03/10/00266/PRI, dated 2 March 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with plans Refs: 10006.01 & 10006.02 submitted with the application.
 - 3) No development shall take place until a sample of the window design to be used has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main Issue

2. The main issue is the effect the replacement glazing would have on the appearance and character of the Friar Gate Conservation Area.

Reasons

3. The building forms part of a modern brick built office complex that has been constructed to the rear of traditional buildings that front onto Friar Gate. The complex has sought to blend in with the traditional architectural styles and materials that characterise the Friar Gate frontage. Currently, the size, pattern and materials of the fenestration can be said to fit in with that of the older buildings.
4. The Council consider that replacing the existing timber framed windows with UPVC units would not succeed in preserving or enhancing the appearance and character of this part of the Friar Gate Conservation Area. Those concerns

arise from what is described as an unsatisfactory bulky, manufactured appearance in comparison with the existing white painted timber framed windows.

5. An adjacent modern building that, unlike the appeal building, fronts onto Friar Gate, has been fitted with UPVC windows. However, the Council points out that this work has not been authorised. Nevertheless, the appearance of this provides a point of reference and a demonstration of the comparative visual properties of the style of treatment that is now proposed.
6. By matching the proportions of the window frames and their white colour, close examination of the adjacent building is required to confirm the use of UPVC. The absence of external glazing bars is perhaps a more obvious difference, but the inclusion of glazing bars behind the external glazed surfaces ensures that the appearance of the windows respects the proportions achieved by the use of timber window components. Similar attention to detail is inferred for the proposed replacement windows.
7. While there are examples of UPVC glazing on some smaller buildings along Friar Gate where successful integration has not been achieved because of the thickness of the frames and glazing bars, this failure would not seem to apply in the present case. Furthermore, the intention to match the proportions of the existing glazing components suggests the proposed design would succeed in producing a result that would sit happily in the particular setting provided by this modern development in St James Court. The appearance of white UPVC on suitably proportioned frames does not appear to differ significantly from a well maintained painted surface. With these factors in mind there is little to suggest that the appearance or character of the Friar Gate Conservation Area would not be preserved if the existing glazing were to be replaced as proposed. Accordingly, the change proposed would be in conformity with saved policy E18 (a) of the City of Derby Local Plan Review, which seeks to preserve or enhance the special character of Conservation Areas.
8. There are matters relating to thermal efficiency which support the proposed changes in window design. However, there would be little justification to accept a visually unsatisfactory solution on this basis. Nevertheless, in this instance, the acceptability of the change in visual terms means that the building would also benefit from the improved energy efficiency that would be achieved.
9. No conditions are suggested, but in order to ensure that final details of the appearance of the windows are approved in advance of any works, and in the absence of any detailed specification, it is necessary to impose a condition requiring a sample to be submitted for written approval.

Chris Frost

Inspector



Appeal Decision

Site visit made on 19 January 2011

by Elaine Benson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Appeal Ref: APP/C1055/A/10/2135207

**Palm Court Restaurant Site, Devonshire Avenue, Allestree,
Derby DE22 1ET**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Peakdale Developments Ltd against the decision of Derby City Council.
 - The application Ref DER/03/10/00383/PRI, dated 29 March 2010, was refused by notice dated 3 August 2010.
 - The development proposed is residential development.
-

Decision

1. I dismiss the appeal.

Procedural Matter

2. A Unilateral Undertaking in respect of contributions towards open space and/or the public realm and improvements to the highway corridor was submitted with the appeal pursuant to Section 106 of the above Act. I address this matter below.

Main Issues

3. The effect of the proposed development on the character and appearance of the surrounding area and its effect on the living conditions of neighbouring occupiers in Devonshire Avenue and Kings Croft.

Reasons

4. The site is a cleared, former restaurant site located within a residential area. Planning permission was granted in 2006 for a 3 and 4 storey apartment scheme which, although lapsed, is material to my decision. There is no dispute that the site constitutes previously developed land which is appropriate for residential use and would meet housing needs in the area.

Character and appearance

5. Changes to Planning Policy Statement 3: *Housing* removed national density targets, although the objective to secure the efficient use of previously developed land is retained. The appeal scheme proposes development at around 64 dwellings per hectare which exceeds the 35 dwellings per hectare set out in saved Policy H13 of the City of Derby Local Plan Review (LP). However, this is a minimum requirement and a higher density development

would not necessarily be unacceptable. Notwithstanding that density figures can provide helpful guidance, an appraisal of the character of the surrounding area is in my view more pertinent to an assessment of whether a proposed development relates satisfactorily to its surroundings, as is also required by policy H13. This approach is consistent with the design advice in Planning Policy Statement 1: Delivering Sustainable Development (PPS1).

6. The site has some prominence due to its corner location close to the junctions of a number of roads. Although set back, it is also visible from the A38 opposite. The developed area immediately surrounding the site largely contains 2 storey houses in fairly generous plots with some having parking in the front gardens. Opposite, on Devonshire Road are a recently constructed 3 storey house and a large replacement house, Courtland House. The designs of both are different to the established houses on the road.
7. Townhouses of a similar form to the proposed dwellings have been erected at the nearby Drum Close and there is recent residential development at Baslow Drive and St George's Close. Works have also commenced on a major development which includes 55 dwellings to the north-west of the appeal site. All comprise high density housing. There is a mix of housing types and densities within the locality, as identified by the appellant's character statement. Nevertheless, the higher density developments are in the main set behind existing or replacement frontage development or are in larger cul-de-sac arrangements. The appeal proposal would be incorporated into a corner site with 2 existing road frontages. The layouts of the high density developments and relationships with surrounding buildings are not therefore directly comparable to the proposed scheme.
8. The set back of Houses 8-10 behind a parking and turning area and the access to the block of three houses at the rear would result in an unacceptably large gap in the frontage. This would be out of character with its surroundings. The layout would also afford open views from the adjacent footpath of an incongruous expanse of parking and turning areas and the back garden wall of House 14. It would also result in a poor back of pavement treatment in a prominent position, notwithstanding the proposed landscaping. This layout appears to result from the need to achieve the necessary parking and turning space for the proposed number of houses and to my mind demonstrates that the scheme is over-intensive.
9. Having regard to the recent developments in the wider area, the requirement to make the best use of this previously developed site and its planning history; there is no objection in principle to high density development here. However, I conclude that the proposed houses would appear cramped and the layout out of character with its visual context. The proposed development therefore conflicts with saved policies H13, GD4 and E23 of the LP and the aims of PPS1 which share similar requirements for new development to be of a high standard of design, to respect its surroundings and to have an appropriate relationship with nearby properties.
10. In respect of other character and appearance matters, the appeal scheme would appropriately step down to reflect the site's topography, with House 1 having a similar ridge height to No 2 Devonshire Avenue. With regard to the variety of house designs and heights found in the locality and noting that the proposed houses would be lower than the previously approved apartments, these aspects of the proposal would be acceptable. The widths of the terraces

would reflect the widths of the nearest surrounding buildings and on this basis I find the principle of terraced housing here satisfactory.

11. The proposed gardens would reflect the smaller back gardens found in most recent developments and would be adequate. Trees to the north of the appeal site are protected by a Tree Preservation Order. Had the appeal been allowed, I am satisfied by the arboricultural evidence provided that conditions could have ensured the health and longevity of the protected trees and others surrounding the site. Notwithstanding that some aspects of the scheme are acceptable, they do not outweigh the concerns I set out above.

Living conditions

12. Part of the proposed House 1 would project slightly forward of the front elevation of No 2 Devonshire Avenue and the rears of the houses would line up. Due to this alignment and having regard to the positioning of windows, the siting of House 1 would not have an overbearing effect on the neighbouring property. Because the ground levels slope down and away from No 2, the extent of overlooking of its rear garden would be similar to that already experienced from the rear windows of No 4 and found in most suburban areas; notwithstanding that House 1 would be 3 storeys.
13. No 1 Kings Croft has a garage to the side and is set in from its boundaries. The houses on plots 11-14 would be forward of No 1 but screened by its high boundary hedge and extensive planting. The lower ground levels on the appeal site, the positions of existing and proposed windows and the intervening landscaping lead me to conclude that there would be no overlooking or loss of privacy arising from the proposed dwellings. Similarly, there is screen landscaping between the proposed houses at the rear of the site and 1B Kings Croft. Furthermore, House 7 would have no rear facing windows above ground floor level to prevent overlooking. Little evidence has been provided that there would be any overshadowing of adjoining properties such as to harm their occupants' living conditions as the Council suggests.
14. I am not persuaded that the proposed development would harm the living conditions of neighbouring occupiers. I conclude that there would be no conflict with the objectives of saved policies GD5 and H13 of the LP to preserve residential amenities.

Unilateral Undertaking

15. A Unilateral Undertaking was submitted with the appeal to secure contributions towards open space, the public realm and improvements to the highway corridor, although this matter was not one which led to the refusal of planning permission. The Council confirms that the heads of terms are acceptable in principle. However, no site-specific justification for the scale of the contributions sought or an assessment of the impact of the proposed houses on the provision of open space or the highway has been provided. Nor do I have adequate evidence of the LP policy or Supplementary Planning Guidance basis for the Council's requests. Based on the limited evidence before me, I am not convinced that the tests of Circular 05/05 and Regulation 122 of the Community Infrastructure Levy Regulations would be met. I have therefore given little weight to the requirement for a Unilateral Undertaking.

Other matters

16. There were pre-application discussions and amendments and I note that the planning application was recommended for approval by officers. I have also had regard to correspondence submitted by local residents which includes letters of support as well as objections to the scheme and it is clear that many residents would like to see the site developed. Notwithstanding this background, the proposal was refused by the Council and I have determined the appeal on its merits.
17. I have considered comments made by the Council about parking provision and driver visibility and the similar concerns expressed by local residents, including the effect of the proposal on highway safety due to the sharp bend in the road. These factors were not included in the reasons for refusal. I have taken account of the technical evidence, my own observations and had regard to the former 52 space restaurant car park. I agree with the Highway Authority that no harm to highway safety would arise from the development and, notwithstanding my comments on the layout above, that the amount of parking provided is acceptable, whether or not the garages would meet the Council's size standard.
18. I note that provision has been made for recycling and refuse bins. Concerns about the effect of the development on local amenities such as schools and medical services, drainage and the potential for flooding were raised with little justification.
19. These points and all other matters raised do not outweigh my conclusions on the first main issue. Accordingly, I dismiss the appeal.

Elaine Benson

INSPECTOR



Appeal Decision

Site visit made on 19 January 2011

by Elaine Benson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Appeal Ref: APP/C1055/A/10/2139896

Units 11 and 12, 218-220 Siddals Road, Derby DE1

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr C Harris against the decision of Derby City Council.
 - The application Ref DER/07/09/00796/PRI is dated 3 July 2009.
 - The development proposed is described as "proposed windows to 1st floor front and rear elevations".
-

Application for costs

1. An application for costs was made by Mr C Harris against Derby City Council. This application is the subject of a separate Decision.

Procedural matters

2. The appellant describes the proposed development as set out above. However, I consider that the Council's description "*installation of windows and door*" better reflects the proposal. I have determined the appeal on this basis.
3. The appeal was made against a grant of planning permission subject to conditions. In dispute is Condition 3 which requires the use of timber for the windows and door and which I identify as the main issue below. However, the Council failed to advertise the planning application as development potentially affecting the character and appearance of the Railway Conservation Area. (It has since been advertised as part of the appeal procedure.) These circumstances require the appeal to be determined on the basis that the Council failed to determine the application.

Decision

4. I allow the appeal, and grant planning permission for installation of windows and door at Units 11 and 12, 218-220 Siddals Road, Derby in accordance with the terms of the application, Ref DER/07/09/00796/PRI, dated 3 July 2009, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 90-P-04 Rev X, 090-P-01 Rev A, 090-P-02 Rev A and 090-P-03.

- 3) Notwithstanding the materials indicated in the planning application submission, the door that is the subject of this planning permission shall be of timber construction.

Main Issues

5. The windows applied for have already been installed in UPVC whereas the Council seeks the use of timber. The main issues are whether the windows respect the historic character of the appeal building and preserve or enhance the character and appearance of the Railway Conservation Area (RCA).

Reasons

6. The appeal building is part of a group of former offices and commercial buildings of varying designs at 218-220 Siddals Road. Planning permission for their conversion to flats and the erection of townhouses was granted in 2001 and included the conversion of No 218 to form Units 11 and 12. Works appear to have been carried out on a phased basis with the townhouses yet to be built. UPVC double glazed windows were installed as part of the overall conversion works which were approved prior to the inclusion of the site in the RCA when it was extended in April 2009. The Council has no record of details of the external materials being submitted or approved. However, it appears from its evidence that no action has been or is likely to be taken on this matter.
7. The appeal proposal is for amendments to the approved scheme in respect of No 218. The works include alterations to and the enlargement of window openings, most of which have been carried out. The Council raises no objections to the sizes or shapes of the openings. I see no reason to disagree and conclude that the new openings preserve the character and appearance of the building and the RCA. There is little convincing justification for the door to match the UPVC windows and the appellant is prepared to use timber. I find the door design to be acceptable and consider timber to be an appropriate material within its context.
8. UPVC windows have been installed to match the other windows in No 218, although the Council requires timber frames. Its front windows are close together and differences between them would be easily discernable from the public realm. In principle, timber frames with the same profile as the existing windows could look similar. However, over time this similarity could be lost due to weathering and would depend on proper maintenance. A loss of design continuity would harm the character and appearance of the building.
9. UPVC windows have been used in the buildings at Nos 218-220 which form the immediate context of the appeal building. However, as they are of differing ages and architecture to No 218 and are all seen as distinct buildings, there is little convincing justification for their window materials to be replicated to ensure visual conformity. Within the wider context, the degree of spatial and visual separation between No 218 and nearby historic buildings with timber windows is sufficient to ensure that the use of UPVC does not harm their settings or appear discordant.
10. It has not been established that the original windows were timber. The Council's Railway Conservation Area Appraisal and Management Plan indicates that metal windows are found in some buildings within the RCA and the appellant states that the 1930's building in the 218-220 group had metal

windows. Nevertheless, I agree with the Council that, in principle, UPVC is an inappropriate modern material in the historic context of the RCA.

11. However, in this case I conclude that the use of UPVC windows provides a continuity of materials and detailing which is important to the appearance of No 218 and preserves the character and appearance of the RCA. I note that the Council's Conservation Area Advisory Committee did not object to the proposed development. The scheme complies with the aims of saved policy E18 of the adopted City of Derby Local Plan Review (LP). Although other LP policies are referred to, I consider policy E18 to be most relevant to this appeal. In reaching my conclusions I have also had regard to the requirements of Planning Policy Statement 5: Planning for the Historic Environment which among other things requires an assessment of the impact of the proposal on the heritage asset.
12. In terms of precedent, each case is required to be determined on its own merits and in the context of current planning policies for the area. It is unlikely that the unique circumstances of this case would be common to other developments. I therefore attach little weight to this concern.
13. For the reasons I set out and having regard to all other matters raised, I allow the appeal and grant planning permission.

Conditions

14. The proposed door should be constructed in timber to reflect surrounding development and to preserve the character and appearance of the RCA. I have attached a condition requiring this. For the avoidance of doubt and because not all of the proposed works have been carried out, I attach a condition to identify the approved plans.

Elaine Benson

INSPECTOR



Costs Decision

Site visit made on 19 January 2011

by Elaine Benson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Costs application in relation to Appeal Ref: APP/C1055/A/10/2139896 Units 11 and 12, 218-220 Siddals Road, Derby DE1

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Harris for a full award of costs against Derby City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for installation of windows and door.
-

Decision

1. I refuse the application for an award of costs.

Procedural matter

2. I set out in my decision the reason for determining the appeal on the basis that the Council had failed to determine the application, although the appeal was made against a grant of planning permission subject to a condition to which the appellant objects. For clarity and to accurately reflect the nature of the submissions made, I have assessed this costs application as if it related to an appeal against the imposition of a disputed condition.

Reasons

3. The costs application by Mr Harris and the response by Derby City Council were both submitted in writing.
4. Circular 03/2009 (the Circular) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. Paragraph B7- B11 of the Circular sets out grounds where the planning authority's handling of the application prior to the appeal may lead to an award of costs. Paragraph B10 indicates that delays in determining an application should only arise because of substantive and unforeseen concerns, which could include the concerns arising from the consultations on the application. No such circumstances have been identified by the Council. I find that the unexplained delay in determining the application without giving an estimate of when the decision would be made amounts to unreasonable behaviour by the Council.
6. However, for an award of costs to be made, it must also be demonstrated by the applicant how this behaviour has resulted in unnecessary or wasted

expense in the appeal process. Although indicated that there have been development costs to the applicant arising from delays in completing the development, the Circular is clear that costs incurred which are unrelated to the appeal itself are not eligible (Paragraph A25) and in accordance with Paragraph A26 "awards cannot extend to compensation for indirect losses." Furthermore, the appellant had the opportunity to make an appeal on the grounds of non-determination. I am not convinced that the Council's unreasonable behaviour has caused the appellant to incur unnecessary or wasted expense in the appeal process.

7. Paragraph B15 of the Circular indicates that planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations. Paragraph B29 of the Circular indicates that the imposition of a condition which does not meet the tests of Circular 11/95 The Use of Conditions in Planning Permissions may be a ground for awarding costs against the Council.
8. I consider that the Council adequately explained its position in terms of planning policy and justified its opinion that the proposal, if UPVC were to be used, would fail to preserve the character and appearance of the Railway Conservation Area. Paragraph B18 of the Circular acknowledges that many appeals involve matters of judgement concerning the character and appearance of the area. This is one such example. Whilst I have found in favour of the appellant, it was a matter of judgement and an assessment of the particular circumstances of this case which led me to conclude that additional UPVC windows are acceptable in this case.
9. Although I disagree with the Council I consider that it provided realistic and specific evidence about the proposed development and therefore adequately substantiated the reasons for imposing the condition. The condition to control the material used for the windows and door was imposed to overcome the Council's objection and thereby to permit the development which might otherwise have been refused.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by Circular 03/2009 has not been demonstrated.

Elaine Benson

INSPECTOR



Appeal Decision

Site visit made on 26 January 2011

by **Julia Gregory BSc (Hons) BTP MRTPI MCMI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Appeal Ref: APP/C1055/A/10/2141347

20 Chesterton Avenue, Sunnyhill, Derby DE33 1GS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Amrik Dullat against the decision of Derby City Council.
 - The application Ref DER/08/10/01062/PRI, dated 24 August 2010, was refused by notice dated 2 November 2010.
 - The development proposed is outline permission to demolish bungalow- Divide land into 3 plots- 1 bungalow, 1 pair of semi-detached houses.
-

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues are the effect on the character and appearance of the area and the effect on the living conditions of the occupiers of adjacent properties and future residents.

Reasons

Character and appearance

3. The application is in outline with all matters reserved.. The appeal site comprises both dwelling and garden land. Garden land no longer falls within the definition of previously developed land in PPS3: *Housing*, and there is no longer a priority for the development of such land. The Council determined the application after that change had taken place and did not oppose the principle of development on that basis.
4. The existing dilapidated bungalow occupies a plot that is somewhat larger than most in Chesterton Avenue. Its siting reflects its original relationship to the head of the Avenue rather than the later dwellings that were added at the hammerhead. The layout plan is indicative and is therefore not for consideration, but it nevertheless gives a useful pointer to the potential layout.
5. The plot widths and the dwellings would have to be very much narrower than elsewhere in the Avenue to be accommodated. This would be significant and noticeable in the street scene. There would also be likely to be narrower gaps to boundaries than elsewhere in the Avenue because of the limited plot widths. The plot widths, dwelling widths and gaps to boundaries would fail to integrate successfully with existing dwellings in Chesterton Avenue.

6. These features would not respect the urban grain and would harm the character and appearance of the area contrary to the City of Derby Local Plan Review (LP) policies GD4, H13 and E23.
7. Although I acknowledge that LP policy H13 also seeks to facilitate higher densities, and PPS3 promotes the efficient use of land, that has to be seen against LP policy GD4 and LP policy E23 which requires development to complement the surrounding area in which it would be located. That an overgrown site would be cleared and that the mix of dwellings would not be unsympathetic does not outweigh the harm that would be caused.

Living conditions

8. Although the dwellings and plots would have limited frontage widths, I am satisfied that this in itself would not necessarily lead to poor living conditions for future residents. This would be subject to detailed consideration of garden layouts and positioning of dwellings.
9. The dwellings could be sited to enable a reasonable relationship to neighbouring dwellings so that the living conditions of the occupiers of those dwellings would not be significantly affected.
10. My conclusions on the second main issue do not outweigh my concerns about the first main issue, and those most affected would be those living in Chesterton Avenue. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Julia Gregory

INSPECTOR



Appeal Decision

Site visit made on 7 December 2010

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 January 2011

Appeal Ref: APP/C1055/A/10/2137315

Chellaston School, Swarkestone Road, Chellaston, Derby DE73 5UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to planning permission.
- The appeal is made by Chellaston Foundation School against the decision of Derby City Council.
- The application Ref DER/11/09/01322/PRI, dated 9 November 2009, was refused by notice dated 8 July 2010.
- The development proposed is extensions to provide changing rooms.

Decision

1. The appeal is dismissed.

Procedural matter

2. The Council considered the application to be for 'extension to school (changing rooms) and creation of all weather sports pitch and floodlighting'. This is an accurate description of the proposed development and the appeal will be determined on this basis.

Reasons

3. The 'changing rooms' element of the proposed development is not contentious. The main issue is the effect of the use of the all weather sports pitch and floodlighting on the amenities of residents of nearby dwellings. The principle concern is the effect of noise resulting in disturbance.
4. Chellaston School is on the west side of Swarkestone Road. To the south and west of the school buildings are grass playing fields that include rugby and football pitches. The application site includes the southernmost building, a pavilion building that would be extended and remodelled to create new changing rooms and other facilities, part of the playing fields and part of a scrubby wooded area in the south corner of the school grounds. The proposed all weather sports pitch (AWSP) would be on land currently partly occupied by two relatively small grass pitches. These would be replaced by the AWSP and a new larger grass rugby pitch that would be established by clearing the part of the wooded area within the site.
5. Alongside the south-east boundary of the school grounds is a footpath beyond which are the gardens of dwellings on Swarkestone Road. The gardens slope up to the dwellings from the footpath which is at the same level as the generally flat school playing fields. The nearest dwellings on Swarkestone Road would be nos.112-120 (five dwellings), which would be about 75 metres from the east corner of the AWSP, and about eleven further dwellings would be within about

100 metres of the AWSP. To the west of the school playing fields are dwellings on Glen Park Close. The nearest of these dwellings would be no.43 that would be about 82 metres from the west fenced edge of the AWSP and there would be another eight dwellings within about 94 metres of the pitch.

6. The application was accompanied by an Environmental Statement (ES) and this was summarised in the reports to the two Council planning committees that considered the application. The Council's appeal statement indicates that they also considered three noise assessments (NA) provided by the Applicant. The original NA was dated 1 December 2008, is an appendix to the ES, and accompanied a previous application that was allowed by the Council (the 2009 permission) but that has been challenged by judicial review. This first NA was revised on 19 March 2010 and again on 23 March 2010. The three NAs and the ES set out mitigation measures to be put in place to alleviate the effect of noise on residential amenity at nearby dwellings. It is necessary, first, to address differences in the mitigation measures set out in these documents and in a later fourth NA.

7. The first NA and consequently the ES recommended the introduction of a bund along the south side of the AWSP to protect residents of dwellings on Swarkestone Road from the adverse effects of noise. The later two NAs recommended the introduction of the same bund and another bund "...to the west of the pitch..." which "...should be sited close to the fence at the rear gardens of Glen Park Close and extend as far as depicted on HSSP drawing 6144P-02B". This application drawing only shows the bund along the south side of the AWSP. The two NAs conclude that noise from pitch activities can be controlled to acceptable levels at the nearest existing residencies on Glen Park Close and Swarkestone Road by the provision of acoustic barriers. The NA was further revised, the fourth NA, and this was submitted in support of the planning appeal.

8. The fourth NA reverts to the conclusion of the first NA and the ES on the subject of mitigation measures; that only the bund to the south of the AWSP is required. It is not clear why the bund to the west of the AWSP was not recommended in the first and fourth NAs but was recommended in the second and third NAs that were submitted to the Council before they determined the application. It is also not clear why, even though the second and third NAs state otherwise, the west bund is not shown on the aforementioned drawing. There is no indication in this regard that the drawing did include this landscape feature at the time the application was considered by the Council but was later altered, before the appeal was submitted, to exclude this feature.

9. There is further confusion on the subject of the west bund. Both committee reports include comments by an Environmental Officer and these refer to the second NA dated 19 March 2010. These comments, with reference to appendix D of the NA, state that "...complaints from noise from the development would be 'likely' from residents living on Swarkestone Road and Glen Park Close during weekend mornings...". But the Planning Officer's opinion in the reports on this subject only has regard to the NA conclusion on the south bund to protect the amenities of residents of Swarkestone Road and has no regard to the conclusion in the second NA that "Similarly, noise from pitch activities can be controlled to acceptable levels at the nearest existing residencies on Glen Park Close by the provision of...(a) bund...".

10. Though the Council maintains that the first three NAs were considered when the application was under consideration by the Planning Committee, members were

not advised about the conclusions of the second and third NAs. It is also likely that application drawing 6144P-02B did not show, as indicated in those NAs, that there would be a west bund to alleviate disturbance caused by noise from use of the AWSP for residents of Glen Park Close. The committee report did express Officer's concerns for the effect of noise from use of the AWSP on residential amenity and whilst the recommendation was to grant planning permission this was to be subject to a condition severely limiting the hours of use of the AWSP. The condition, if permission had been granted, would have prevented use of the AWSP after 1830 hours on weekdays and after 1300 hours on Saturdays and would have prevented use of the AWSP on Sundays and Bank Holidays.

11. The hours of use set out in the condition would clearly not have been acceptable to the Applicants who had applied for permission to use the AWSP between 0800 and 2100 hours on weekdays, and between 0800 and 1800 hours on Saturdays, Sundays and Bank Holidays. In recognition of concerns and following discussions with the Council's Senior Environmental Health Officer the Appellants, in their appeal statement, state that "...permission is now being sought for use of the AWSP over the following hours of use: Mon-Fri – 09:00 to 21:00; Sat – 09:00 to 18:00; Sun – 10:30 to 16:00; No use on Bank Holiday Mondays". The Appellants mention that these proposed hours of use are less than those approved under the challenged 2009 permission. Despite this, it is necessary to consider whether the proposed hours of use set out in the appeal statement would result in harm being caused to residential amenity at nearby residential properties.

12. Firstly, it is worth acknowledging that noise from use of the relocated grass rugby pitch would not in itself result in any greater noise being generated. However, when the grass pitch is fit for play then its use could be in addition to the use of the AWSP. The situation for residents of dwellings on Swarkestone Road would therefore change. Currently, there is one relatively small grass pitch in close proximity to their gardens but if the development were to be carried out there would be one large grass pitch and the AWSP in close proximity. Furthermore, the AWSP would probably be in use throughout the year irrespective of the weather whereas, currently, use of the grass playing fields is restricted by the weather and by ground conditions even if it isn't raining. In addition, sporting activity would be concentrated, in times of inclement weather, in one location rather than being spread out across the extensive playing fields.

13. It is also necessary to compare 'details of use of existing pitches' set out in Appendix A of the appeal NA and a 'draft programme of use' of the AWSP set out in Appendix 1 of the ES. The former indicates that the school sports pitches are used by two sports clubs in the period April/June to October on every weekday between 1800 hours and 1930/2000 hours. The latter indicates that the AWSP would be used by four sports clubs and for recreational use on weekdays between 1730 hours and 2130 hours (reduced in the appeal statement to 2100 hours). It is likely that these uses would continue throughout the year. The prospect for some residents of Swarkestone Road therefore is that in close proximity to their gardens and not far from their dwellings there would be an AWSP in evening use for about three hours on every weekday of the year rather than one grass pitch, if it was used in addition to or in preference to other grass pitches, for about two hours on weekday evenings during a six month period.

14. A conclusion in the appeal NA is "Calculations have...shown that noise...may exceed the agreed limits at the nearest...residencies (on) Swarkestone Road, but can be controlled to the agreed acceptable levels by the provision of a 2m acoustic

barrier or bund...". No where is it claimed that these residents would not be able to hear activity on the AWSP, just that the noise heard would be reduced to an acceptable level. If the periods of use of the AWSP were to be the same as the use of the existing playing fields then there would be no material concern. However, the length of use of the AWSP on a weekday evening would be about twice that of the grass sports pitches and weekday evening use would be throughout the year rather than for a six month period. The noise of sports activity on weekday evenings at dwellings on Swarkestone Road would be regular.

15. Weekday evening activity, and some weekend activity, would be organised and the noise of this sporting activity would almost certainly be punctuated by the shrill noise of whistles. It is unlikely that such high frequency noise would be significantly reduced by the bund or by any vegetation that would be planted on it. It is acknowledged that organised activity during the summer might be dispersed on the grass pitches but during the autumn, winter and spring it is likely that it would be concentrated on the AWSP. The shrill noise of whistles for long periods on every day of these three seasons, except the very occasional Bank Holiday, would be especially disturbing for the residents of dwellings on Swarkestone Road. The noise might not be audible within the dwellings but it would be in the garden areas and it would undermine residents' enjoyment of their outdoor amenity areas.

16. The draft programme of use of the AWSP indicates that Melbourne Rugby Football Club Juniors would use the facility for a four hour period on Sundays, from 0900 to 1300 hours though presumably this would change to 1030 to 1430 hours. The concession to start activity at 1030 hours is based on an acceptance, from taking noise measurements on site, that background noise levels are lower on early Sunday mornings than at any other time of any day. The noise measurements, set out in the appeal NA, were taken between 0730 and 0930 hours and between 1630 and 1830 hours on one Sunday in March 2010. No other measurements were taken so it is not clear how a start time of 1030 hours would avoid noise intruding into the quiet period at the start of any Sunday. On this day of the week residents can reasonably expect not to be disturbed by noise in addition to normal background noise which, in this case, is from traffic on the A50 to the south. Noise from activity on the AWSP between 1030 and 1600 hours, a period when residents of Swarkestone Road are likely to be seeking to enjoy their gardens, would undermine that reasonable expectation for a quiet Sunday, throughout the year.

17. There would be, on the basis of the appeal application and notwithstanding the conclusions of the second and third NA, no west bund. There would therefore be no mitigation measures for residents of Glen Park Close. Though further away from the AWSP than the dwellings on Swarkestone Road residents of Glen Park Close will have the same expectations for quiet Sundays. It is unlikely that there are school sports fixtures on Sundays and even if there are these would only be during term times. The committee reports included the statement that "...complaints from noise from the development would be 'likely' from residents living on...Glen Park Close during weekend mornings...". Mornings extend beyond 1030 hours and without mitigation noise from the AWSP would probably be audible in the gardens of dwellings on Glen Park Close and would thus undermine residents' expectations for reasonably quiet Sundays.

18. The school playing fields are bounded to the north by dwellings on Station Road and Station Close. These dwellings are further away from the AWSP than the dwellings on Swarkestone Road and Glen Park Close and noise from activity on the facility is not likely to be disturbing at any time for the residents of these dwellings.

Conclusion on the main issue

19. Noise resulting from weekday evening use and Sunday morning use of the AWSP is likely to be, despite the south bund, disturbing for residents of nearby dwellings on Swarkestone Road, particularly in their garden areas, and the noise from Sunday morning activity is likely to be disturbing for residents of dwellings on Glen Park Close. This decision has focussed on weekday evening and Sunday use. It is likely, however, given that use of the AWSP at these times would be disturbing for local residents, that activity on the AWSP would also be disturbing on Saturdays. The proposed development would have a significant adverse effect on the amenities of residents of Swarkestone Road and Glen Park Close and thus conflicts with saved policy GD5 of the City of Derby Local Plan Review.

Other matters

20. West facing windows in the rear elevations of dwellings on Swarkestone Road overlook the appeal site. The dwellings are at a higher level than the AWSP and views from these windows of the facility would not be obscured significantly by intervening vegetation. The proposed floodlights have been designed to minimise light pollution outside the facility but the AWSP would be brightly lit in the evenings particularly during winter months. The introduction of the floodlit facility would undermine the evening outlook from the aforementioned dwellings particularly when residents might otherwise be enjoying views of the setting sun.

Overall conclusions

21. Some of the application documents were the same as those submitted with the application that resulted in the challenged 2009 permission. Others are different, however, particular the subsequent revisions of the original NA, and this appeal has been determined with regard to the documents and other information submitted with the appeal application.

22. The appeal application was confusing on the subject of the west bund. Whilst the NA considered by the Environmental Officer concludes that this would be necessary and is shown on an application drawing, it is unlikely that the committee members were aware of this or that the drawing did show such a feature. Clearly it does not form part of the development that the Appellants are promoting in their appeal, which has been determined on the same basis.

23. The benefits for the school and the local community, and for the promotion of sport, are acknowledged, and the representations in support of the application and the appeal have all been considered. The benefits of the ASWP, however, do not outweigh the need to protect the amenities of nearby residents.

24. Use of the proposed AWSP would generate noise that would be disturbing for residents of dwellings on Swarkestone Road and Glen Park Close and would thus have a significant adverse effect on their amenities. For this reason, having taken all other matters mentioned in support and opposition to the appeal into account, the appeal fails and planning permission is refused for extension to school (changing rooms) and creation of all weather sports pitch and floodlighting at Chellaston School, Swarkestone Road, Chellaston, Derby.

John Braithwaite

Inspector